

TENNESSEE GENERAL ASSEMBLY
FISCAL REVIEW COMMITTEE



FISCAL NOTE

HB 2608 - SB 2480

February 25, 2022

SUMMARY OF BILL: Enacts the *Tennessee Broadband Investment Maximization Act of 2022*. Authorizes a rural electric cooperative (Cooperative) to provide broadband services outside the service area of its electric system upon certain conditions.

Removes prohibition of such Cooperative or joint venture of such cooperatives from providing alarm systems.

Creates an exemption from sales and use tax of purchases and leases of all equipment, machinery, software, ancillary components, appurtenances, accessories, or other infrastructure that is used in whole or in part in producing broadband communications services, beginning January 1, 2023 through December 31, 2028.

FISCAL IMPACT:

Decrease State Revenue –

Exceeds \$25,000,000/FY22-23

Exceeds \$50,000,000/Each Year FY23-24 through FY27-28

Exceeds \$25,000,000/FY28-29

Decrease Local Revenue –

Exceeds \$9,000,000/FY22-23/Permissive

Exceeds \$18,000,000/Each Year FY23-24 through FY27-28/Permissive

Exceeds \$9,000,000/FY28-29/Permissive

Other Fiscal Impact – A precise increase in state revenue from payment of Franchise & Excise taxes by rural electric cooperatives providing broadband service outside their current service area and from such cooperatives obtaining alarm contractor certification or licensure cannot reasonably be determined.

Passage of this legislation could result in an estimated \$1,300,000,000 in potentially taxable expenditures in the state becoming tax exempt.

Assumptions:

- Pursuant to Tenn. Code Ann. §§ 65-25-102 and 65-25-134, Cooperatives are nonprofit entities that are authorized to provide telecommunications and broadband internet access within the Cooperative's service area.
- The proposed language would authorize a Cooperative to provide broadband internet access, internet protocol-based video, video programming, or related or similar services outside of their current service upon:
 - Obtaining the written consent from each municipal electric system (MES) or electric cooperative system in whose service area the Cooperative will provide the service; and
 - Providing notice to the Department of Economic and Community Development (ECD) that the Cooperative shall not receive from MESs and Cooperative systems rates, terms, or conditions for accessing the systems' electric poles that are more favorable than those made available to all other providers of broadband services by the systems.
- As Cooperatives are nonprofit entities, any fiscal impact to local government as a result of expansion of services is estimated to be not significant.
- It can be reasonably assumed that an MES will not consent to a Cooperative providing broadband services within the municipal service area if the MES currently provides that same service; therefore, authorizing a Cooperative to expand its broadband services into the service area of a MES will not result in any significant impact to local government.
- Pursuant to Tenn. Code Ann. §§ 67-4-2007(a) and 67-4-2105(a), nonprofit businesses are not responsible for paying franchise and excise (F&E) taxes, except for earning and net worth which is garnered outside of the original scope of business for which nonprofit status was originally granted.
- It is assumed that any Cooperative opting to provide broadband service will be responsible for paying F&E taxes; however, due to multiple unknown variables such as how many Cooperatives have opted to provide broadband service, the extent of their earnings and net worth earned from broadband service, and any increase in such earnings due to the ability to expand the service area where broadband service is provided, a precise increase in state revenue cannot reasonably be determined.
- Removing the prohibition of Cooperatives from providing alarm systems may result in an increase to number of applicants seeking an alarm contractor certification or license; however, it is not known how many Cooperatives will choose to obtain alarm contractor certification or licensure and therefore, any increase to state revenue cannot reasonably be determined.
- Based on information provided by the Department of Revenue:
 - It can be reasonably assumed that the total national spending on broadband infrastructure in typical year is approximately \$100,000,000,000.
 - Assuming Tennessee would account for about two percent of that total, the state would see \$2,000,000,000 in spending.
 - If 50 percent, or \$1,000,000,000, is taxable the state would generate \$70,000,000 in revenue using the state sales tax of 7 percent.
 - If 25 percent, or \$500,000,000, is taxable the state would generate \$35,000,000 using the state sales tax of 7 percent.

- A reduction in state revenue of \$50,000,000 is assumed as a midpoint.
- Exempting all purchases for anything used in producing broadband communications from sales and use tax from January 1, 2023 until December 31, 2028 will result in an estimated decrease in state revenue exceeding \$50,000,000 and a decrease in local revenue exceeding \$18,000,000. Due to the effective and sunset dates, the first (FY22-23) and last (FY28-29) years will equal 50 percent of the full-year impact, or a decrease in state revenue exceeding \$25,000,000 (\$50,000,000 x 50%) and a decrease in local revenue exceeding \$9,000,000 (\$18,000,000 x 50%).
- The recently passed *Infrastructure Investment and Jobs Act* includes \$65,000,000,000 in spending designated for broadband. Passage of this legislation could result in up to \$1,300,000,000 of taxable expenditures in the state that would become tax exempt.

IMPACT TO COMMERCE:

Other Commerce Impact – Due to multiple unknown factors, a precise impact to business revenue and expenditures and jobs in Tennessee cannot reasonably be determined.

Assumptions:

- Authorizing Cooperatives to provide broadband service outside of their service area will result in a change to business revenues for private companies currently providing such services; however, it is unknown how many such organizations will opt to expand their service area, when such services will be available to customers, the extent of customers with a new option in service providers, and the extent of any impact to rates charged by private businesses for such service as a direct result of the competition provided by such entities.
- Removing the prohibition of Cooperatives from providing alarm systems may result in Cooperatives choosing to obtain alarm contractor certification or licensure which, in turn, may cause a reduction in the private alarm systems' customer base.
- Exempting certain purchases from sales and use tax will result in a decrease to business expenditures. The extent of any decrease to business expenditures cannot be reasonably determined.
- Due to multiple unknown factors a precise impact to business revenue and jobs in Tennessee cannot reasonably be determined.

CERTIFICATION:

The information contained herein is true and correct to the best of my knowledge.

A handwritten signature in black ink that reads "Krista Lee Carsner". The signature is written in a cursive, flowing style.

Krista Lee Carsner, Executive Director

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